IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,
Plaintiffs,
vs.
R.J. REYNOLDS TOBACCO
COMPANY, et al.,
Defendants.
_____/

Miami-Dade County Courthouse
Miami, Florida
Tuesday, 9:35 a.m.
June 13, 2000
PHASE II-B
TRIAL - VOLUME 542

The above-styled cause came on for trial before the Honorable Robert Paul Kaye, Circuit Judge, pursuant to notice.

APPEARANCES:
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BRADLEY LERMAN, ESQ.
On behalf of Defendant Philip Morris
DECHERT PRICE & RHOADS
WILLIAM DODDS, ESQ.
On behalf of Defendant Philip Morris
COLL DAVIDSON SMITH SALTER & BARKETT
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On behalf of Defendant Philip Morris
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On behalf of Defendant R.J. Reynolds
JONES, DAY, REAVIS & POGUE
JAMES JOHNSON, ESQ.
JAMES YOUNG, ESQ.
DIANE G. PULLEY, ESQ.
On behalf of Defendant R.J. Reynolds
KING & SPALDING
GORDON SMITH, ESQ.
On behalf of Defendant Brown & Williamson
CLARKE SILVERGLATE WILLIAMS & MONTGOMERY
KELLY ANNE LUTHER, ESQ.
On behalf of Defendants Liggett Group
and Brooke Group

APPEARANCES (Continued)

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KENNETH J. REILLY, ESQ.
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On behalf of Defendant Brown & Williamson

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JAMES T. NEWSOM, ESQ.
On behalf of Defendant Lorillard
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ANTHONY UPSHAW, ESQ.
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On behalf of Defendant Council for Tobacco Research

I N D E X

WITNESS	PAGE
MICHAEL SZYMANCZYK	
Direct by Mr. Webb	53791

E X H I B I T S

PLAINTIFFS' EXHIBITS	OFFERED PAGE	ADMITTED PAGE	FOR ID PAGE

E X H I B I T S

DEFENDANTS' EXHIBITS	OFFERED PAGE	ADMITTED PAGE	FOR ID PAGE

(Whereupon, the following proceedings were had:)

This is Tuesday, June 13, 2000. A.M. session.

THE COURT: All right. Anything we have to discuss before we bring a jury out?

We're going to get started on time? I don't believe it.

MS. LUTHER: The jury might not be able to handle it, Judge.

THE COURT: Okay, I think they're ready, so let's bring the jury out.

Mr. Szymanczyk.

THE BAILIFF: Bringing in the jury. Jurors entering the courtroom.

(The jurors entered the courtroom.)

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16 THE COURT: All right, have a seat, folks.
17 Good morning, all.
18 THE JURY PANEL: Morning.
19 THE COURT: Big surprise, we're going to
20 start on time.
21 Okay, over the night has anybody seen
22 anything on T.V., heard anything on radio, seen
23 anything in the newspapers or magazines or anything
24 that relates to this case in any manner, shape or form?
25 THE JURY PANEL: No, sir.

6

1 THE COURT: I guess we're ready to proceed.
2 Mr. Webb.
3 MR. WEBB: Thank you, Your Honor.
4 Good morning, ladies and gentlemen.
5 DIRECT EXAMINATION (Continued)
6 BY MR. WEBB:
7 Q. Mr. Szymanczyk, good morning.
8 A. Morning.
9 Q. Let me pick up where we left off yesterday.
10 We were going through the major events or
11 changes regarding how Philip Morris conducts its
12 business while you've been the chief executive officer
13 of Philip Morris USA. And I'm down to the, I guess,
14 fourth bullet point on this chart: Internet Web site
15 communication with the public.
16 That's where we left off yesterday. Let's
17 talk about that a little bit this morning.
18 I guess let's start with basics. I think we
19 all know what the Internet is, but just tell the jury,
20 what is a Web site?
21 A. Well, a Web site is like your address on the
22 Internet. It would be like your houses on your street;
23 well, your Web site is your address on the Internet.
24 Q. Tell the jury, has Philip Morris launched an
25 Internet Web site to communicate with the public about

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1 tobacco-related issues?
2 A. Yes.
3 Q. And when did Philip Morris launch or begin
4 the Web site?
5 A. It went up in October of 1999, I believe.
6 Q. And tell the jury, why did Philip Morris
7 decide to have an Internet Web site to communicate with
8 the public about tobacco-related issues?
9 A. Well, over the past couple of years, the
10 Internet has become a broad communication vehicle
11 that's really grown at a dramatic rate. It's a good
12 tool to use to communicate a lot of information that
13 can be easily accessed by people, and has become
14 increasingly the place people go to find information.
15 So it was a good way for us to communicate.
16 Q. Again, going back to the principle that we
17 talked about yesterday, about actions speaking louder
18 than words, is this Web site consistent with the core
19 values that you showed the jury yesterday?
20 In fact, let me show you, yesterday, what I
21 marked as Exhibit 40024-A, your first core value that
22 you have there. It says: We are honest with one
23 another, with our stakeholders, fully disclosing all
24 appropriate information and not -- and not just that
25 which supports our point of view.

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1 I can try to read this morning.
2 Is the Web site -- is that consistent or is
3 that part of your core values, to do that?
4 A. Yes. In particular, it's a way to disclose
5 appropriate information to people who want to know
6 about smoking issues.
7 Q. Just so the jury understands, is Philip
8 Morris in any way using its Web site to market or sell
9 cigarettes on its Web site?
10 A. No, we are not.
11 Q. Now, I want to show the jury a number of
12 different segments of your Web site, and we're going to
13 go through some of them today.
14 Let's start with, does Philip Morris have
15 what is known as a home page that introduces a reader
16 to what's on your Web site?
17 A. Yes.
18 Q. And let's -- what is a home page?
19 A. Well, it's the starting point in your Web
20 site. It kind of allows people to see what all the
21 available information is that's accessible as you go
22 through the Web site, and it makes it easy for people
23 to figure out, if they want to see a particular area,
24 where it is and how to get there.
25 Q. I'm going to show you the screen now what has

1 been marked as Exhibit 40059-A, and is that your home
2 page?
3 A. Yes.
4 Q. And it introduces the jury to -- or
5 introduces the reader to different subject matters. I
6 see where it says Home, Company and Products. What
7 does that tell the reader about?
8 A. It gives them a little background about the
9 company and tells them what products we made.
10 Q. The issue I'm going to talk about here today
11 is Tobacco Issues. And let's go to -- I think if we
12 just go to the next slide, we'll see, if the reader
13 goes on down, do you then come to what Philip Morris
14 tells or introduces the reader to about tobacco issues
15 there?
16 A. Yes.
17 Q. And I think what I have on the screen is
18 marked as Exhibit 40059-B, what I've called out on the
19 screen is what is said there, which is: Tobacco
20 Issues, many adults choose to smoke, notwithstanding
21 the serious health issues surrounding smoking. Learn
22 more about a number of important issues, including
23 smoking and health.
24 My first question is: Why does Philip
25 Morris, right at the outset, tell the reader that there

1 are serious health issues surrounding smoking? Why
2 does Philip Morris do that?
3 A. Because there are.
4 Q. And if you go down, if I understand, if the
5 reader goes down and clicks on this topic here, Health
6 Issues for Smokers, will the Web site reader then get
7 more details about that subject matter of what those
8 health issues are?
9 A. Yes.
10 Q. Let's show the jury that. Is this the
11 page -- I think what I've got on the screen now is

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12 Exhibit 40059-C. Tell the jury what that page is.
13 A. Well, that's the opening page on the subject
14 of health issues for smokers.
15 Q. And then, as we go down this, does it talk
16 about different types of health issues?
17 A. Talks about different types of health issues
18 and provides access to information on smoking and
19 health.
20 Q. And the first category there is Cigarette
21 Smoking and Disease in Smokers; is that correct?
22 A. Correct.
23 Q. Let's show the jury what is said there by
24 Philip Morris on its Web site.
25 Cigarette Smoking and Disease in Smokers:

1 First sentence says: There is an
2 overwhelming medical and scientific consensus that
3 cigarette smoking causes lung cancer, heart disease,
4 emphysema and other serious diseases in smokers.
5 Let me just take that sentence. First of
6 all, does Philip Morris believe that that's a truthful
7 statement?
8 A. Yes, we do.
9 Q. Tell the jury, why did Philip Morris put that
10 on its Web site?
11 A. Well, we put it on our Web site because we
12 wanted people to understand that that was true and that
13 that is important information for them to know.
14 Q. The next sentence says: Smokers are far more
15 likely to develop serious diseases, like lung cancer,
16 than nonsmokers.
17 Does Philip Morris believe that that's a
18 truthful statement?
19 A. Yes, we do.
20 Q. Why did Philip Morris put that on its Web
21 site?
22 A. Because we wanted smokers and potential
23 smokers to know that.
24 Q. Now, the statement that there's no -- the
25 next: There is no "safe" cigarette.

1 What's that referring to?
2 A. It means there's no such thing as a safe
3 cigarette, at least to our knowledge, that's on the
4 market today.
5 Q. And do you believe that to be a truthful
6 statement?
7 A. Yes.
8 Q. Philip Morris goes on to tell the reader:
9 These are and have been the messages of public health
10 authorities worldwide.
11 Again, does Philip Morris believe that's a
12 truthful statement?
13 A. Yes, that is true.
14 Q. And the last sentence tells the reader:
15 Smokers and potential smokers should rely on these
16 messages in making all smoking-related decisions.
17 Why does Philip Morris tell the reader that
18 they should rely upon -- that they should rely upon the
19 messages from public health authorities in making all
20 smoking-related decisions?
21 A. Well, that's a directive from Philip Morris.
22 We believe that that's what people should do. That's

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23 the information they should rely on and should believe
24 when making a decision relative to smoking.
25 Q. Now, I want to ask you about this subject

13

1 matter, about cigarette smoking and disease in smokers.
2 Let me ask you this question: Does Philip
3 Morris agree that smoking cigarettes causes lung cancer
4 and other serious diseases?
5 A. Yes.
6 Q. And what does Philip -- what scientific
7 evidence does Philip Morris rely on to reach that
8 conclusion, sir?
9 A. Well, the same statistical evidence that the
10 Surgeon General relies on in making that determination.
11 Q. Now, having said that, are there still
12 certain issues related to causation that scientists
13 that work for your company, Philip Morris, and other
14 scientists still don't know the answer to?
15 A. Yes.
16 Q. Explain what those are.
17 A. Well, the scientific community doesn't
18 understand the chain of events that occurs in the human
19 body, that starts with the constituencies in smoke and
20 goes through the changes in DNA, that result in a tumor
21 growing in the human body. That is not understood in
22 science today. It remains a mystery, whether or not
23 there's a certain constituency in smoke, or there's
24 some combination of factors that cause that to occur is
25 not understood.

14

1 Q. And when Philip Morris scientists are called
2 to testify under oath in court proceedings, are they
3 required to tell the truth regarding their opinions
4 about the current state of scientific knowledge?
5 A. Yes, they are.
6 Q. Now, if the scientific community ever
7 discovers exactly what constituents or constituent in
8 cigarette smoke, say, causes cancer and how it causes
9 cancer, would that information be important to Philip
10 Morris and your scientists in developing safer
11 cigarettes?
12 A. Yes, it would.
13 Q. Explain that to the jury.
14 A. Well, if you knew what the specific
15 constituents were that are in tobacco smoke, what you
16 could do is design a product to take them out of
17 tobacco smoke so that they wouldn't be there anymore.
18 Q. As far as that is concerned, taking out
19 constituents in cigarette smoke, because of that lack
20 of scientific knowledge that exists, what assumptions
21 do Philip Morris scientists work under in choosing what
22 research projects to carry out and how to carry out
23 those projects?
24 A. Well, there are a group of constituencies in
25 smoke that the public health authorities have

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1 determined to be carcinogens in human beings. And so
2 we operate on the assumption that they are. And then,
3 from a product development point of view, our efforts
4 are to try to remove those constituencies from
5 cigarette smoke.
6 Q. Regardless of whether in fact it's true or
7 not, you still make that assumption?

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8 A. Yes.
9 Q. I take it, after coming to Philip Morris, you
10 probably learned more about these issues than you knew
11 before you came to Philip Morris; is that fair to say?
12 A. Yes.
13 Q. Tell the jury, I'm going to ask you, prior to
14 you coming to Philip Morris, did you personally believe
15 that cigarette smoking can cause lung cancer and other
16 diseases?
17 A. Well, my belief was I simply expressed my
18 belief as smoking was bad for your health. I don't
19 know that I ever thought about it from that point of
20 view. I thought about it really, from the point of
21 view that really, smoking was bad for your health.
22 Q. How did you learn that smoking was bad for
23 your health?
24 A. Well, I kind of grew up that way. That was
25 what my coaches told me and my parents told me. In

16

1 fact, for most of my young adult life, it said on the
2 pack: Smoking is dangerous to your health. So that
3 was kind of what I learned when I grew up.
4 Q. Go back to the Web site just for a moment,
5 that first sentence, where Philip Morris says: There's
6 an overwhelming medical and scientific consensus that
7 causes lung cancer and those other diseases.
8 Why does Philip Morris set forth that strong
9 medical and scientific consensus, as opposed to
10 explaining in detail what you've just told the jury
11 about what Philip Morris understands to be the current
12 state of knowledge regarding this issue?
13 A. Well, I think there are really two things
14 here. One of them is that in 1997, in discussions with
15 members of the Congress of the United States, we made a
16 commitment to those members of Congress that there
17 would be one voice to the public on the subject of
18 smoking and health, and that would be the public health
19 authorities.
20 And so we want to make sure that we're living
21 up to that commitment. And so the information that we
22 provide is, in fact, the specific information from the
23 public health authorities.
24 We agree with that statement, but our
25 objective is to provide that specific information.

17

1 Then what we do is we go on to provide what is really
2 our implied agreement or our directive to people who
3 look at this information, which is to say: Hey, you
4 should rely on this information when making any
5 decision. This is the information that you should rely
6 on.
7 Q. Now, why did Philip Morris in 1997 make a
8 commitment to Congress?
9 MR. ROSENBLATT: I'm going to object to the
10 reference to Congress, Your Honor.
11 (Proceedings were had at sidebar)
12 BY MR. WEBB:
13 Q. Sir, let me ask you this, in 1997, did Philip
14 Morris make the decision to withdraw from all public
15 debate about the issue of smoking and causation?
16 A. Yes.
17 Q. And did Philip Morris make the decision to
18 let the public health community in this country speak

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19 with a single voice to warn people about the health
20 risk of smoking without any interference or comment by
21 Philip Morris?
22 A. Yes.
23 Q. And have you followed that policy
24 consistently up to today?
25 A. Yes.

18

1 Q. Is that consistent with what you've done on
2 your Web site?
3 A. Yes.
4 Q. And does Philip Morris believe it's in the
5 public interest to do that?
6 A. Yes.
7 Q. Now, I think you said just a moment ago, I
8 want to make sure, that first sentence on your Web
9 site -- Mr. Rosenblatt asked somebody about that first
10 sentence -- does Philip Morris actually agree with that
11 statement that there is an overwhelming medical and
12 scientific consensus that cigarette smoking causes lung
13 cancer and those other diseases?
14 A. Yes.
15 Q. By the way, has anybody from the general
16 public contacted Philip Morris to say that they were in
17 any way confused or befuddled about the message that
18 Philip Morris was putting out on its Web site about the
19 message to the public on smoking and health.
20 MR. ROSENBLATT: Objection, how would he know
21 that?
22 THE COURT: Only if he knows. From your own
23 knowledge.
24 THE WITNESS: No, not to my knowledge.
25 BY MR. WEBB:

19

1 Q. Let me go back to this page for smokers. If
2 we go down and call out what's right underneath, where
3 you give that statement about cigarette smoking and
4 disease causation, Philip Morris goes on to, on its Web
5 site -- well, what are you doing here? Explain, what
6 is this next portion of your Web site doing, as far as
7 the Web site reader?
8 A. Well, the idea is to then, having made those
9 statements, give people access to the information that
10 supports those statements. So, for example, this
11 accesses certain Surgeon General's Reports from which
12 those conclusions are drawn.
13 Q. And are those sometimes referred to as links
14 to other --
15 A. Well, those right there are highlights, and
16 then below there are links, yes.
17 Q. What are links?
18 A. Well, links are where you can click on one of
19 those bullet points, and you can -- you'll actually go
20 to the Web site for -- you'll go off our Web site and
21 into, for example, the Web site for the Surgeon General
22 and the 1998 Surgeon General's Report.
23 Q. That information from the public health
24 community that Philip Morris allows the reader to click
25 onto and get into another body of information, whatever

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1 information that Web site reader goes to, whether it's
2 the Surgeon General, the World Health Organization, the
3 Centers for Disease Control or the American Cancer

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4 Society, whatever they link to, will that advise the
5 reader about the serious health effects of smoking?
6 A. Yes. It provides the information directly
7 from those people on those subjects.
8 Q. And if we were to click, let's say, if the
9 Web site reader were to click on the 1964 Surgeon
10 General Report, I think I put on the screen now what I
11 have marked as 40059-G, is that where the Web site
12 reader would go to?
13 A. Yes. They would go to summary and
14 conclusions from that report.
15 Q. And what particular report is that, sir?
16 A. It's the 1964 Surgeon General's Report on
17 smoking and health.
18 Q. And then I'm not going to go through it, but
19 you could then go through all that information that's
20 in that; is that correct?
21 A. Yes.
22 Q. Let me go back then to our page here. If
23 they were to click on any of that other information,
24 let's say the U.S. Centers for Disease Control, then
25 where would you end up?

1 A. You'd wind up on their Web site in that
2 relevant area on their Web site.
3 Q. Do any of those public health authorities in
4 any way suggest that smoking does not harm you?
5 A. No, not that I'm aware of.
6 Q. Now, let's go back to the Health Issues for
7 Smokers page. And does Philip Morris provide
8 information on another smoking and health topic, that
9 is Cigarette Smoking and Addiction?
10 A. Yes, we do.
11 Q. And I put on the screen now, I believe, the
12 Exhibit 40059-D. Is that the page on health -- is that
13 the section under Health Issues for Smokers --
14 actually, that's right under the Disease Causation
15 section, is that correct?
16 A. Yes, it is.
17 Q. It goes right from Disease Causation into
18 Addiction?
19 A. Yes.
20 Q. Let's show the jury what Philip Morris says
21 on this subject matter on your Web site, Cigarette
22 Smoking and Addiction: Cigarette smoking is addictive
23 as that term is most commonly used today. It can be
24 very difficult to quit smoking, but this should not
25 deter smokers who want to quit from trying to do so.

1 Does Philip Morris believe that that's a
2 truthful statement?
3 A. Yes, we do.
4 Q. And why do you put this on your Web site,
5 sir?
6 A. Well, because we want people to be aware of
7 that.
8 Q. Now, right after this, on your Web site, does
9 the Philip Morris Web site immediately go on to explain
10 to the Web site reader how public health authorities
11 today commonly use and define "addiction" and determine
12 that cigarette smoking is addictive?
13 A. Yes.
14 Q. And let's show that to the jury. Right under

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15 the statement that Cigarette Smoking and Addiction, we
16 go down here, we see that you provide some additional
17 information as to how public health authorities today
18 commonly define "addiction"; is that correct?
19 A. That's correct.
20 Q. And I think I can call that out. You give
21 some examples and cite certain authorities; is that
22 correct --
23 A. Yes.
24 Q. -- as to how public health authorities today
25 commonly define "addiction"?

23

1 A. That's correct.
2 Q. I'm not going to get into this debate here at
3 this trial. Has the definition changed over the years
4 from the public health authorities?
5 A. Yes, it has.
6 Q. In fact, let's go down a little bit further
7 on your Web site. Do you then actually give the Web
8 site reader places they can actually click into to find
9 out what the common definition is today of "addiction"
10 and how it is that they concluded cigarette smoking is
11 addictive?
12 A. Yes.
13 Q. And, for example, you provide information to
14 the reader on this topic; is that correct?
15 A. That's correct.
16 Q. And just generally explain to the jury what
17 that information is.
18 A. Well, it provides a Surgeon General's Report
19 on this subject, 1988 report. Then it provides some
20 additional information from the FDA and from the World
21 Health Organization in their assessment of why they
22 believe smoking is addictive and on what basis they
23 define that.
24 Q. The Web site reader can get in and get that
25 information by clicking on these areas; is that

24

1 correct?
2 A. That's correct.
3 Q. In fact, the 1988 Surgeon General Report, is
4 that the report where the Surgeon General made the
5 decision, for the first time, that cigarette smoking
6 was addictive?
7 A. Yes.
8 Q. And explained his reasons?
9 A. That's right.
10 Q. Now, if I go back to your Web site, right
11 after you tell the Web site reader about cigarette
12 smoking and addiction, I see there's a topic right
13 underneath there that says Information About Quitting
14 Smoking?
15 A. Yes.
16 Q. Why does Philip Morris, on its own Web site,
17 provide information to people about how to quit smoking
18 your products?
19 A. Well, because there are some people who
20 choose to quit smoking. And so, if they choose to quit
21 smoking, we want them to be able to access information
22 on how to do that.
23 Q. And if they click on -- if the Web site
24 reader clicks and wants more information about quitting
25 smoking, and I've got Exhibit now 40059-E on the

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1 screen, is this a page that comes up that gives much
2 more detail on the subject matter -- if someone wants
3 to quit, does this give them a lot more detail about
4 how to go about doing it?
5 A. Yes, it does.
6 Q. Let's show the jury some of what's on here.
7 I'm not going to go through all this. But why don't
8 you explain, what are you trying to get across to the
9 Web site reader here, sir?
10 A. Well, we're trying to get across what the
11 Surgeon General says relative to quitting smoking. And
12 that the best thing that people can do, relative to
13 their health, is to quit. That that's from the Surgeon
14 General's point of view, and I think the scientific
15 community's point of view, what seems to be the best
16 thing to do.
17 And then it shows some additional information
18 relative to quitting smoking and what the effects of
19 quitting smoking are.
20 Q. And does Philip Morris agree you've got the
21 statement here: To reduce the health risk of smoking,
22 the best thing to do is to quit. Public health
23 authorities do not endorse either smoking fewer
24 cigarettes -- do not endorse either smoking fewer
25 cigarettes or switching to lower yield brands as a

1 satisfactory way of reducing risk.
2 Does Philip Morris agree with that?
3 A. Yes, we would agree with that.
4 Q. Now, let's go on. Then, if the reader wants
5 more information about, for example, the relative
6 riskiness of lower yield brands, you send them to
7 certain Web sites; is that correct?
8 A. That's correct.
9 Q. Do all of those other Web sites advise the
10 reader that it's not a good idea to just switch to
11 lower yield cigarettes?
12 A. Yes, that's what they do.
13 Q. Is that why you provided this information?
14 A. Yes. We want the relevant information to be
15 there.
16 Q. Let's go on on this same page. You state on
17 your Web site here, I've got on the screen now 40059-F.
18 This is a continuation of talking to people about
19 smoking and quitting, is that correct?
20 A. Yes.
21 Q. It says: It can be difficult to quit
22 smoking, and many smokers who try to quit do not
23 succeed.
24 Does Philip Morris believe that to be a
25 truthful statement?

1 A. Yes.
2 Q. Millions of smokers in the United States and
3 around the world have succeeded though, most without
4 outside assistance, is that true?
5 A. Yes, it is true.
6 Q. Why does Philip Morris say that on your Web
7 site?
8 A. Because that's what's factually correct.
9 Q. Now, as stated in drkoop.com; is that former
10 Surgeon General Dr. Koop's Web site?

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11 A. Yes.
12 Q. It says: There's only one way to change your
13 tobacco habit, you have to do it yourself, your way.
14 If you want to see more information --
15 And you provide more information again
16 related to addiction and quitting; is that correct?
17 A. That's correct.
18 Q. And you go on to provide more information
19 about it; is that correct?
20 A. Yes.
21 Q. This gets into different programs and
22 products that can be used if people are serious about
23 quitting?
24 A. That's correct.
25 Q. Why do you put that on your Web site?

1 A. So people can access that information, so if
2 they choose to quit, they can have access to things
3 that will help them do that.
4 Q. And then you provide them with -- provide,
5 for your convenience, links to sources of information
6 about quitting smoking, and then another location where
7 they can get more details about quitting smoking; is
8 that correct?
9 A. That's correct, yes.
10 Q. Now, I want to go to another topic, just for
11 a minute.
12 Mr. Rosenblatt had presented this jury with
13 certain expert testimony on the issue of whether Philip
14 Morris adequately discloses the ingredients in its
15 cigarettes to people who smoke. My question is: Does
16 Philip Morris publicly disclose the ingredients in its
17 cigarette brands right on this Web site that you've
18 been describing to the jury?
19 A. Yes.
20 Q. And I've now put on the screen what is
21 Exhibit 40084, and my question is: Is this the section
22 of the Web site, of the Philip Morris Web site, that
23 introduces the reader to the subject matter of
24 ingredients in your cigarettes?
25 A. Yes, it is.

1 Q. Let's show the jury what you say on your Web
2 site, at least the first part of it. Explain to the
3 jury what are you trying to communicate here.
4 A. Well, the first thing is the major ingredient
5 in a cigarette is tobacco. That's really, most of the
6 cigarette is made up of tobacco. But then there are
7 some other ingredients. And then we start off, since
8 tobacco is the major ingredient, by giving people
9 access to information from the U.S. Department of
10 Agriculture regarding tobacco.
11 Q. So, let me get back to -- so they can get
12 more information about tobacco from the U.S. Department
13 of Agriculture?
14 A. Right.
15 Q. Then you go on to talk about other
16 ingredients, and explain what you say there on your Web
17 site.
18 A. Yes, we show the fact that there are other
19 ingredients, and we disclose what all of those other
20 ingredients are, to the U.S. Department of Health and
21 Human Services, and that's taken place since 1986.

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22 Q. And then do you go on to tell the reader
23 exactly what they can find on your Web site as far as
24 disclosure of ingredients?
25 A. Yes.

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1 Q. Now, there's three, it says there's three
2 categories on cigarette ingredient information on this
3 Web site. Tell the jury what each one is and why
4 Philip Morris discloses it to the public.
5 A. Well, the first one is what's called Tobacco
6 Ingredients by Brand. What that does is it provides,
7 in weighted order basis, in other words, in terms of
8 the amount of weight of the cigarette, each component
9 makes up the major ingredients in each type of
10 cigarette that we make by brand. So, if somebody was
11 to look up a particular cigarette they smoke, they can
12 see that.
13 The second category provides a composite list
14 of all the ingredients that we use, including the
15 ingredients that are in all of our flavor formulas, and
16 it shows the maximum weight of any of those ingredients
17 in all of our product, and some of the common ways
18 those ingredients are used in all food products,
19 because all of the ingredients we use are on what's
20 called generally-accepted, a safe-for-use list of
21 ingredients that food manufacturers use.
22 And then there are some nontobacco-related
23 ingredients, things like glues for the paper and things
24 like that, and all of those ingredients get disclosed
25 separately, because obviously they're part of a

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1 cigarette.
2 Q. Let's just show, if we go to that first
3 category, Ingredients by Brand, if I were a smoker and
4 I smoked a certain type of Marlboro, hard pack, red,
5 full-flavor cigarettes, there's some way I could punch
6 into the computer the name of what I smoke and get
7 what's in my brand. Is that essentially right?
8 A. Yes. Yes.
9 Q. And you do that for all of your brands, all
10 cigarettes you sell?
11 A. Yes.
12 Q. I'm going to actually -- I printed this out
13 so I'm not going to take up the jury's time.
14 Let me give you what I have marked as Exhibit
15 40084-A, and hand it to you. And just tell the jury,
16 what is that exhibit I just handed to you?
17 A. Well, if you printed out all of the
18 information on this segment of the Web site on
19 ingredients, this is it.
20 Q. Okay. Now -- and how -- well, I take it each
21 brand has many different types then; is that correct?
22 A. Yes.
23 Q. Let's just pick one. This is for Marlboro
24 100s Filter Hard Pack Red. And then explain, I'll call
25 out, what is it that Philip Morris discloses?

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1 A. Well, it discloses, again in descending order
2 by weight, what the primary ingredients are in that
3 particular product.
4 Q. So I guess that means that there is more
5 tobacco than water, right?
6 A. Right.

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7 Q. There's more cocoa than licorice; is that
8 correct?
9 A. That's correct.
10 Q. What is this last category, Natural and
11 Artificial Flavors? Explain that to the jury.
12 A. Well, a small amount of each cigarette is, in
13 fact, a specific blend of ingredients that result in
14 what's the uniqueness of that product, in terms of its
15 taste. And that's considered to be a trade secret.
16 That's the formula, it's like the formula for
17 Coca-Cola, it would be the formula for that particular
18 product.
19 Q. Even that -- even those natural and
20 artificial flavors, are they actually disclosed in the
21 next category, the composite list?
22 A. Yes, they are.
23 Q. Let me leave it there. And let me hand to
24 you the next exhibit, which I have marked as Exhibit
25 40084-B. And I'll just ask you, is this a printout of

1 the second category of ingredient disclosures that your
2 Web site says is available to the reader?
3 A. Yes, it is.
4 Q. And what is that, sir?
5 A. Well, what it does is it lists all of these
6 ingredients that are used, any of them that we use for
7 any flavor formula. And then it shows the quantity not
8 exceeded in terms of the percent of the weight of the
9 cigarette.
10 Most of them you'd see are very, very small
11 amounts. The function -- most of them are flavors,
12 some of them are processing aids. And then how some of
13 those, what some of the other uses of that particular
14 ingredient are in other products.
15 Q. Now, for example, just look at that, I gave
16 you the full printout, which I'm not going to take the
17 time to go through here, but how many total different
18 ingredients are listed as part of the composite list?
19 A. 156.
20 Q. Let's just show the jury the first page, do I
21 now have -- I put on the screen what is Exhibit 40084
22 B. Is that the first page of the composite?
23 A. Yes.
24 Q. And I just listed -- here, let me call it
25 out. At the top, Philip Morris makes a statement about

1 what's disclosed here; is that correct?
2 A. Yes, we do.
3 Q. Explain why you're saying that on your Web
4 site.
5 A. Because that's what we believe to be true.
6 Q. And then you show, I just picked out 3, 4, 5,
7 6, 7 -- there's 156 of them on here, correct?
8 A. Yes.
9 Q. Explain to the jury what is disclosed here.
10 A. Well, you can see several different
11 ingredients. And then you see, for example, the
12 percentage of the weight of the total cigarette that
13 that particular ingredient represents, that's the
14 number. And then you can see how it's used, and then,
15 again, you can see some of the various other uses or
16 places that you would find that ingredient in typical
17 use.

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18 Q. Now, you said there was a third category; is
19 that correct?
20 A. Yes.
21 Q. What's the third category of ingredient
22 disclosures?
23 A. Those are things that are used in the
24 cigarette in, really, the construction of the
25 cigarette.

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1 Q. Give the jury some examples.
2 A. Like glue, paper, things like that.
3 Q. Paper, the filter?
4 A. Filter, yes.
5 Q. Let me hand to you the next exhibit, which
6 I've marked as Exhibit 40084-C. And is that a printout
7 from your Web site of the, that third category of
8 disclosures of the -- actually, what do you call that
9 particular disclosure?
10 A. Well, they're called nontobacco components of
11 the cigarette.
12 Q. And let's show the first page to the jury.
13 I've now put the first page of what you have in your
14 hands on the screen. And explain to the jury what
15 they're looking at.
16 A. Well, there are various categories of these.
17 This one happens to be cigarette paper. So, it shows
18 you the various ingredients that make up cigarette
19 paper.
20 Q. And if we went on through that, do you then
21 have, like, for example, just explain, what are the
22 other categories?
23 A. Filter adhesives is another category, filter
24 papers is another category, ink, monogram ink is
25 another category. So that shows all of the components

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1 that make up those various things.
2 Q. And so does Philip Morris, between those
3 three disclosures, do you disclose everything that's in
4 the product?
5 A. Yes.
6 Q. Now, the Web site that we've been spending a
7 little time here going through this morning, sir, did
8 Philip Morris try to design it so it would be what is
9 called user-friendly?
10 A. Yes, we did.
11 Q. And did you receive comments that people find
12 it easy to use?
13 A. Yes, we have.
14 Q. Now, once you designed the Web site and you
15 have all this information available, what did Philip
16 Morris do to get the message out to people that the Web
17 site is there and that they can access it?
18 A. Well, the first thing that occurred was when
19 we put the Web site up, actually, it received a lot of
20 publicity. So it was really in every major newspaper,
21 ran articles about the Web site and what kind of things
22 were contained on the Web site.
23 Q. Did you announce it so it would get
24 publicity?
25 A. Yes, we did. We did a press release to make

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1 sure people were aware of it. Then what we did was, at
2 the end of 1999, we sent out a direct-mail piece to

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3 everybody on our database, that informed them that the
4 Web site existed, gave them the Web site address, told
5 them some of the subjects that were on the Web site,
6 including the subject about smoking and health; and
7 provided, in addition to the Web site address, a 1-800
8 number for people who didn't have access to the Web
9 site via computer, so they could call up. And then we
10 put together a set of brochures that provide the
11 information from the Web site so that we can mail it to
12 them.
13 Q. What did all that cost you to do all that?
14 A. It was a little over $25 million.
15 Q. Let me just give you an example. Let me hand
16 you what I've marked as Exhibit 40060. Why don't you
17 hold it up and explain what that is, to the jury?
18 A. This was the direct-mail piece that went out
19 to the people, and you can see it kind of mirrors the
20 home page. Inside, it tells people about what's on the
21 Web site: Smoking prevention and health issues for
22 smoking, smokers, accomodations for smokers and
23 nonsmokers, quitting smoking, and so on.
24 It gives them kind of a view of what the home
25 page looks like, again. And then it gives them the Web

1 site address and a 1-800 number. And also, if they
2 don't have a computer, where they might go to find a
3 computer if they want to access -- but again, they can
4 call the number and get this information directly from
5 us.
6 Q. Thank you. Let me also -- you mentioned, if
7 somebody doesn't have a computer, but if they want to
8 just get the information in hard copy, that you provide
9 that; is that correct?
10 A. That's correct.
11 Q. Let me hand to you what I have marked as
12 Exhibit 40077, and why don't you just explain to the
13 jury what that exhibit is.
14 A. This is an example of what somebody would get
15 mailed if they called up. And then it has a little
16 folder in it. And then it has the information off the
17 Web site. So, it has the tobacco issue information,
18 Health Issues for Smokers, for example, Quitting
19 Smoking, and so on, other reference points to go to.
20 So it's that kind of information.
21 Q. So all the -- in fact, the information that
22 we just went through on the health issues for smokers
23 about disease causation, addiction, quitting, is all of
24 that there?
25 A. Yes, summaries of all -- obviously there's a

1 lot more on the Web site than you could put in a
2 pamphlet, but the summary information is on here.
3 Q. Thank you.
4 Now, I'm going to leave behind the Web site
5 and move on to your next topic, next bullet point on
6 the chart, of major events or changes regarding how
7 Philip Morris conducts its business while you've been
8 the CEO, and that topic is Recent Research and
9 Development Activities to Address Health and Safety
10 Issues.
11 Have you prepared a chart to show the jury
12 some recent research and development projects that are
13 currently being carried out at Philip Morris?

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14 A. Yes, I have.
15 Q. Let me put on the screen now what I have
16 marked as Exhibit 40063. And tell the jury what that
17 chart reflects, sir.
18 A. Well, it reflects the category, or the areas
19 where we are currently doing product development work
20 in an effort to lower the risks inherent in the
21 product.
22 Q. I'm going to go through these pretty quickly,
23 but I want to give the jury an indication of what's
24 currently going on today at Philip Morris in the area
25 of R&D, not to repeat anything that was presented in

1 Phase I, but to bring the jury up to date.
2 First of all, Combustion Research, can you
3 generally explain to the jury what that combustion
4 research is and then tell them what's going on at
5 Philip Morris currently?
6 A. Yes. Well, some of the issues related to the
7 formation of certain constituencies that the public
8 health authorities believe are harmful really occur in
9 the burning of the tobacco. And at certain
10 temperatures, certain constituencies really get formed.
11 So this is research really around the burning of
12 tobacco, at what point certain ones of these bad
13 constituencies actually occur in an effort to try to
14 figure out a way to change the way a cigarette burns,
15 the way tobacco burns or the temperature in which to
16 remove them.
17 And there's a particular category of
18 constituencies, they're called PAHs, or polycyclic
19 aromatic hydrocarbons. PAH's is easier for me. That's
20 what that area of research is focused on.
21 Q. How is that project coming along today?
22 A. Actually, very well. It really has required
23 some work by these universities to actually be able to
24 monitor the formation in the burning of the cigarette,
25 for the development of some measurement tools. But

1 actually, I think they've been identified --
2 MR. ROSENBLATT: Your Honor, I'm going to
3 object to this. This is hearsay.
4 THE COURT: Yes, I'll sustain the object.
5 BY MR. WEBB:
6 Q. Without going into anything they've told you,
7 you've listed there, is Philip Morris working with
8 other outside organizations on this project?
9 A. Yes.
10 Q. And who are they?
11 A. U.S. Department of Energy, Princeton
12 University and Brown University.
13 Q. Would you explain to the jury, why does
14 Philip Morris sometimes work with outside groups of
15 scientists as you work on projects?
16 A. Well, because they have specific expertise in
17 many areas where we don't. So they're interested in
18 working on these kinds of projects as well, and they
19 have the scientific expertise to do that.
20 Q. Let me just move down then to the next
21 project that you've listed on your chart, Selective
22 Filtration Research.
23 Just generally, tell the jury what that
24 project is and tell the jury what is going on today as

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25 far as that research is concerned at Philip Morris.

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1 A. Well, I talked about combustion research,
2 that really has to do with things forming during the
3 burning of the cigarette, trying to have the cigarette
4 burn differently to keep them from not forming --
5 selective filtration focuses on after something is
6 formed in the burning, taking it out before the smoke
7 goes into the human body.
8 MR. ROSENBLATT: Excuse me, same objections.
9 THE COURT: No, I think he's explaining this
10 generally. But details of any research would be a
11 different story.
12 BY MR. WEBB:
13 Q. Go ahead.
14 A. And so it really is all about designing a
15 filter that has components in it that act like magnets,
16 remove things like aldehydes, 1-3 butadine and nitric
17 oxide, that are considered to be harmful.
18 Q. What's the status of that project?
19 A. Actually, that project is doing very well,
20 and we've made good progress in the development of
21 techniques that we think will work here. That again is
22 being done with outside laboratories, specifically
23 Cornell and University of Idaho.
24 Q. Let me move down then to the third project,
25 Tobacco Leaf Chemistry Research. Tobacco-specific

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1 Nitrosamines. Tell the jury what that project is and
2 then describe what its status is today.
3 A. Okay, tobacco-specific nitrosamines are
4 another area where there is concern. They're called
5 TSNAs. They actually form as a tobacco leaf dries and
6 goes from being green to being brown.
7 In the United States there are really two
8 types of curing processes of tobacco. One of them is
9 called flue-cure, where the tobacco is actually cured
10 or dried with artificial heat; the other type is called
11 Burley tobacco, where they're air-dried, where the
12 tobacco actually hangs in a barn and just dries due to
13 air.
14 What we're doing, as are other tobacco
15 companies, actually is developing a technique for
16 farmers to use in curing their tobacco to keep the
17 TSNAs from forming or have them form at a very low
18 level. We've been successful in determining a
19 technique for flue-cured tobacco.
20 We funded a $35 million grant to the
21 Flue-cured Tobacco Growers Association, which they are
22 providing additional money to help farmers convert
23 their drying barns to this technique. And that project
24 is under way. And we're in the process of completing
25 testing on a similar approach to air-cured tobacco that

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1 we will then make available to Burley growers.
2 Q. And what's the status of that project, I
3 mean --
4 A. Well, I just described it.
5 Q. As far as how soon could a commercial
6 cigarette be out that doesn't have nitrosamines in it?
7 A. Well, I would say that a cigarette, on a
8 broad basis, in terms of any quantity, could probably
9 be out in the next 18 months or so. To broadly convert

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10 the whole market will take about three years, because
11 it takes that long to have all the tobacco in the
12 system get changed and all the various drying barns to
13 get changed. So that will take place over a period of
14 time as the whole system changes.
15 Q. And the outside organizations that you're
16 working with on this project?
17 A. Virginia Tech University and the University
18 of Kentucky.
19 Q. I'm going to go to the last project, called
20 Banded Paper Fire Safety. Describe what that project
21 is and what its status is today, sir.
22 A. One of the harm issues related to cigarette
23 smoking is the potential for a cigarette, if not
24 properly monitored, to ignite a fire. So, if somebody
25 falls asleep smoking a cigarette, it ignites their sofa

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1 or their bed or something like that, that's a problem.
2 We've been working for a number of years to
3 see if there wasn't a way to take something that
4 actually is a burning object and keep it from igniting
5 a fire when unattended.
6 We've designed a piece of technology called
7 banded paper. It really is taking the paper on a
8 cigarette and kind of building speed bumps in it. And
9 those speed bumps, when the cigarette is unattended, do
10 a pretty good job of having the cigarette go out before
11 it can reach a temperature, laying on a fabric, to
12 ignite a fire.
13 So, it performed pretty well on tests in
14 terms of making a pretty healthy reduction in ignition
15 propensity from a cigarette that's left unattended on a
16 fabric.
17 Q. And would that be in the market some day?
18 A. I expect that we will have a brand in the
19 marketplace nationally before the end of the year that
20 contains that paper.
21 The issue with this, of course, is paper is
22 run at extremely high speeds. So the difficulty in
23 this project is ramping up paper mills that have
24 capacity to make the paper, and make it with the
25 precision that makes sure it always has these speed

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1 bumps in it on the right places, so we're assured, when
2 we build the product, that, in fact, we're giving the
3 consumer what we think we're giving them.
4 Q. As an indication as to how long it takes for
5 some of these projects, how long has Philip Morris
6 actually been working on trying to develop that
7 specialized paper?
8 A. It's been about a 10-year project.
9 Q. Today how many scientists at Philip Morris
10 are currently devoted to working on projects to improve
11 cigarette design to address health issues?
12 A. About 400, we have about 400 people out of
13 our R&D community focused on that.
14 Q. Now, the work you've just described and
15 that's set forth on this chart here, that's work
16 dealing with what is known as the conventional
17 cigarette; is that correct?
18 A. That's correct.
19 Q. Are you familiar with the term
20 "nonconventional cigarette"?

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21 A. Yes.
22 Q. And please explain what that term is. What
23 does that refer to?
24 A. Well, it's a cigarette that is different in
25 terms of how it's actually smoked and how it's

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1 constructed and how it's used than the cigarette most
2 people are accustomed to.
3 Q. Now, has Philip Morris, over the last few
4 years, had a research and development project ongoing
5 to develop a nonconventional cigarette?
6 A. Yes.
7 Q. And what is the name of that cigarette, that
8 product?
9 A. It's called Accord.
10 Q. The jury heard about Accord in Phase I, so
11 I'm not going to get into a lot of detail. Just
12 generally remind the jury what the Accord is and tell
13 the jury what the current status is today.
14 A. In simple terms, it's a cigarette that is
15 constructed differently and is used in an electronic
16 computer controlled lighter. The tobacco -- the big
17 difference is, instead of the tobacco being burned, the
18 tobacco is heated. And that makes a substantial
19 difference in what happens with that cigarette when you
20 use it.
21 Q. Now, what's the status in the marketplace
22 today of the Accord?
23 A. Well, right now we have expanded into -- we
24 have a consumer research project going on with it as
25 we're completing the development. And we've expanded

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1 into 200 stores now in Richmond, Virginia. And we are
2 connected to consumers that use it. And we have made a
3 number of product modifications, both in the lighter
4 and in the cigarette, responding to what the consumer
5 is telling us, as well as made some additional progress
6 in reducing some of the constituencies that form in the
7 product.
8 So, it continues to evolve. But right now we
9 have a new version of the cigarette in product
10 integrity testing, which is where we make sure that
11 there's nothing that's an unintended consequence from
12 the cigarette in terms of relative to the prior product
13 or traditional cigarette.
14 And we have some development work being
15 completed on the lighter. And we should have all of
16 that work completed during, I think -- roughly by the
17 end of the first quarter of next year.
18 Q. But right now, if I went to Richmond,
19 Virginia, there's at least the current form that
20 project is in, I could go in and buy it?
21 A. You could go in and buy it in the current
22 form. And there's a revised format of it currently in
23 our own product development testing.
24 Q. Let me show the jury at least what is the
25 current version of it in the market today, at least.

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1 This is in Richmond in what you call test markets?
2 A. It's in a consumer research project is what I
3 would call it.
4 Q. Consumer research project, but I can go in
5 and buy this product?

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6 A. Yes, you can go in and buy it.
7 Q. Let me hand to you what has been marked as
8 Exhibit 40202, and simply show the jury what it is.
9 And you can open it up if you'd like.
10 A. This is -- if you bought the starter kit,
11 this is what you would buy. And what's in it, it comes
12 with the actual lighter kit, where you get your
13 instruction book, and you get -- this is the charger,
14 the lighter is in here. This is the lighter, charger,
15 a spare element that goes in the lighter. So you have
16 an extra one.
17 And then, in addition to that, you get three
18 packs of the Accord cigarette that goes in here. This
19 is how you start off.
20 Q. Actually, if you use the product, I don't
21 want to use it in the courtroom obviously, but can you
22 pull out the lighter? Where does the cigarette go?
23 What I call the cigarette?
24 A. Okay. The cigarette, see, it's different.
25 Q. Now, is that tobacco?

1 A. Yes, it's tobacco cigarette, but it's
2 constructed differently, obviously, because it's going
3 to be heated eight different times around the outside.
4 So it goes into this lighter like this and this is
5 what's called a puff-activated lighter. As you draw on
6 the cigarette, it actually activates the heat element
7 for one heat element, which gives you one puff.
8 And on the side of the cigarette it actually
9 shows you how many puffs are left each time you take
10 one. And that's how it works.
11 Q. How many puffs do you get off of it?
12 A. Eight.
13 Q. Eight puffs?
14 A. Uh-huh.
15 Q. And then when you're done with it, what do
16 you do with the cigarette?
17 A. You take it out and dispose of it.
18 Q. Throw it away?
19 A. Yes.
20 Q. That's creating cigarette smoke at a much
21 lower temperature; is that essentially what it's doing?
22 A. That's correct. Two things it does: It
23 doesn't create any cigarette smoke when it's not being
24 used, you can take a puff on this and come back to it
25 an hour later and it hasn't burned at all; also because

1 it's not burning, there is no coal, it's just heating
2 the side of the cigarette, the temperature is much
3 lower.
4 Q. Now, as Philip Morris continues to work on
5 the Accord, are you continuing to run tests on the
6 smoke produced by the Accord to determine if the Accord
7 is able to reduce significantly the amount of
8 constituents in cigarette smoke that have been
9 identified by the public health community as being
10 harmful?
11 A. Yes.
12 Q. And have you brought with you today a recent
13 chart, a chart that shows some of those recent results
14 of testing done by Philip Morris' R&D department?
15 A. Yes.
16 Q. Let me show you what is marked as Exhibit

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17 40091, and would you explain to the jury, the heading
18 says: Reduction of Harmful Smoke Constituents of
19 Accord.
20 Can you walk through the chart and just
21 explain it briefly to the jury?
22 A. Well, I talked about PAHs a little earlier.
23 This product has 100 percent reduction in PAHs. I
24 talked about tobacco-specific nitrosamines. This
25 current product has a reduction, 57 percent of one kind

1 and 47 percent of another. And obviously, as we take
2 that down in overall tobacco that we get from farmers,
3 that will come down further.
4 Then it just shows you a whole list of other
5 items, and it just shows the reductions. So, a number
6 of those are still 100 percent reduction and another 90
7 percent reductions.
8 Carbon monoxide is an important one. 82
9 percent in carbon monoxide reduction is a very large
10 reduction.
11 Q. Is it fair to say that because basically
12 you're creating smoke at a much lower temperature, that
13 you are able to reduce, if not completely, by a high
14 margin, most of the constituents that have been
15 identified as harmful?
16 A. Yes, that's true.
17 Q. Now, just tell the jury what problems are you
18 facing. Are there problems in getting the consumer to
19 accept that kind of product?
20 A. Yes. I mean, it's different, for one thing,
21 the product that is in the consumer -- is in the stores
22 right now, consumers tell us is a little bit too weak
23 in terms of its taste. So, the product that we have in
24 product integrity testing has a stronger flavor to it,
25 that we think will help in that regard. And so that's

1 an issue.
2 There are some issues around the lighter and
3 in terms of the battery lasting through a pack. But we
4 think we have that corrected now with the manufacturer
5 in terms of the design of the battery.
6 We also have some additional approaches to
7 the lighter to make it a little more user friendly and
8 easier to clean. And then, ultimately, a big hurdle is
9 going to be to decide what to say to the consumer.
10 Because in the consumer research test right now, we
11 don't say anything to the consumer about the lowering
12 of these constituencies.
13 Q. What this jury saw here, you do not say
14 anything --
15 A. No, we do not say anything about that
16 because, actually, that would be a violation of an FTC
17 rule, to talk about constituencies in smoke. That's
18 not allowed today.
19 And we've begun into conversations with the
20 public health authorities on this subject. They're
21 aware of this. They've seen this project. They
22 understand what it does. And they're now in the
23 process of trying to figure out, what is it we should
24 say to the consumer relative to this product? What
25 kinds of information should the consumer be given, so

1 that they'll know about the appropriate information.

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2 So, we've got to work our way through that.
3 We've begun in that process, but we have to work with
4 the public health authorities in determining that.
5 Q. Can you give us the prediction of when this
6 might be on the market? I can walk to Denver from here
7 in Miami?
8 MR. ROSENBLATT: Objection, speculative.
9 MR. WEBB: Your Honor, it's his business.
10 THE COURT: I think under the
11 circumstances -- Overruled.
12 A. I'm projecting to get it in the marketplace
13 next year. But obviously that will depend on the
14 progress that we make and the progress the FDA makes in
15 making some determination about what should be said.
16 Q. And that dialogue is ongoing?
17 A. Yes.
18 Q. I'm going to leave behind -- we've completed
19 the chart of the major events or changes that have
20 occurred while, during the time that you've been the
21 CEO. And I want to move to a different topic
22 completely that's not on there.
23 I want to ask you some questions about the
24 effects of a large punitive damage award on Philip
25 Morris, Incorporated.

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1 I take it you're aware that the issue before
2 this jury, that's being addressed, is what amount, if
3 any, of punitive damages should be awarded against
4 Philip Morris and the other companies. You're at least
5 generally aware of what the issue is here?
6 A. Yes, I am.
7 Q. Have you given thought to how a large
8 punitive damage award would impact and affect your
9 company, Philip Morris USA?
10 A. Yes.
11 Q. Let's start with, I want to ask you some
12 questions about the current financial condition of
13 Philip Morris USA.
14 Let me start with, as with all companies, all
15 corporations, is Philip Morris required to prepare on a
16 regular basis certain accounting and financial reports?
17 A. Yes.
18 Q. And they set forth your financial condition,
19 your true financial condition; is that correct?
20 A. Yes, they do.
21 Q. And you're required to make these reports?
22 A. Yes, we are.
23 Q. Is there one of those formal financial
24 reports that sets forth what is known as Philip Morris'
25 net worth?

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1 A. Yes.
2 Q. I want to talk just for a little bit, please
3 tell the jury, when you, as a business man, talk about
4 the net worth of your company, what does the phrase
5 "net worth" mean?
6 A. Well, net worth is really the -- you take all
7 the assets of the company, and you subtract from all
8 the assets of the company all the liabilities of the
9 company that are known. This is all based on a concept
10 called fixed and determinable, these are things that
11 are known. Then the difference between those is your
12 net worth.

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13 Q. And in financial circles, is net worth
14 sometimes called book value?
15 A. Yes.
16 Q. And is that net worth sometimes on these
17 financial statements called stockholders equity?
18 A. Yes, it is.
19 Q. They all mean the same?
20 A. Yes, they do.
21 Q. Your total assets, then you take out your
22 liabilities, and what's left is your net worth?
23 A. Yes.
24 Q. Now, when we talk -- this may be obvious --
25 but when we talk about assets, let's just take your

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1 company -- well, let's just take general. Give me a
2 basic definition of what does the word "asset" mean.
3 What does it mean?
4 A. Well, an asset is money, or some instrument
5 that represents money, like money owed you; or
6 receivable or debt that's owed you; or it's hard
7 assets, like property or your factory or equipment that
8 you own; it's inventories, either of your product that
9 hasn't been sold or inventories of raw materials. All
10 of those things would be assets that a business has.
11 Q. So, anything I own or that someone else owes
12 me, that I can determine, that would be an asset?
13 A. Yes.
14 Q. Let's just take your company, Philip Morris.
15 Give the jury an example of what are some of the major
16 assets of Philip Morris USA.
17 A. Well, they would be our plants, our
18 factories, our inventories, any receivables that we
19 have. We have three factories, for example, and we
20 have equipment in those factories. We have inventories
21 of materials. And we have money that's owed us. Those
22 would all be assets.
23 Q. And as far as liabilities, give me first a
24 general definition. What is a liability? Then we'll
25 talk about what your major ones are.

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1 A. Well, liability is debt. It's money you owe
2 that you're obligated to pay. It's called, again,
3 fixed and determinable. You know you owe it and you
4 know when you owe it.
5 Q. Give me some examples of what would be some
6 of Philip Morris' major liabilities.
7 A. Well, payments to suppliers for raw
8 materials, salaries to employees that have been earned
9 but not yet paid, retirement benefits that have been
10 accrued by employees, payments to the states under the
11 Master Settlement Agreement that are known and have
12 been determined, those would be examples of
13 liabilities.
14 Q. Now, tell the jury what is the formal or
15 official financial report that Philip Morris is
16 required to prepare that sets forth all the assets and
17 all the liabilities of Philip Morris USA and then
18 calculates net worth, what is the name of that
19 financial report?
20 A. It's called a balance sheet.
21 Q. And at the end of each calendar year, is an
22 audit done of Philip Morris USA or Philip Morris,
23 Inc.'s, your company, is there an audit done on the

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24 balance sheet that calculates current net worth?
25 A. Yes.

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1 Q. Now, I'm going to give you -- let me give you
2 what I have marked as Exhibit 40107, hand you what has
3 been marked as Exhibit 40107, and ask you to tell the
4 jury what that document is.
5 A. It's the Philip Morris, Incorporated, audited
6 consolidated financial statement as of December 31st,
7 1999.
8 Q. Now, is that the most current Philip Morris,
9 Incorporated, year-end financial statements?
10 A. Yes.
11 Q. And are the financial statements you have in
12 your hand there marked as Exhibit 40107, are they
13 audited financial statements?
14 A. Yes.
15 Q. And what does that mean if they're audited,
16 what does that mean?
17 A. Well, what it means is that an independent
18 third party auditing company, in this case it's Price
19 Waterhouse Coopers, takes all your books -- actually,
20 they're auditing our books all year long, but they
21 summarize their audit. And what they do is they
22 represent whether or not you have reflected truth in
23 your financial statements.
24 Q. Now, the particular auditing firm here was
25 this Price Waterhouse firm?

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1 A. Yes.
2 Q. Is that a major accounting --
3 A. Yes, one of the largest firms in the world.
4 Q. Now, just in looking at that document, let me
5 put a page of that document -- is that the first page
6 of the document that I put on the screen now?
7 A. Yes.
8 Q. And does this -- is this what it shows us
9 that it's audited?
10 A. Yes.
11 Q. And I put on the screen the language. Is
12 this accounting language that basically means it's been
13 audited, and they find that it's been audited in
14 conformity with accounting practices accepted in the
15 United States?
16 A. Yes.
17 This is their -- the auditors actually work
18 for the board of directors. So they have to report
19 back to the board of directors, and this is them
20 saying: Hey, we've looked at the books of Philip
21 Morris USA, and we've determined that they're accurate.
22 Q. Now, immediately after that page in the
23 exhibit, what's the next page of the exhibit? Tell the
24 jury.
25 A. This is the Philip Morris, Incorporated,

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1 consolidated balance sheet as of December 31st, 1999.
2 Q. That's your last year-end balance sheet; is
3 that correct?
4 A. That's correct.
5 Q. Audited?
6 A. Yes.
7 Q. And I put it on the screen. And it's small
8 print, but I've just called out the heading on the

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9 chart; is that correct?
10 A. Yes.
11 Q. This is a Philip Morris, Incorporated,
12 consolidated balance sheet at December 31, 1999. Is
13 that correct?
14 A. Correct.
15 Q. Does this then calculate the net worth or, I
16 think in this case they call it stockholders equity; is
17 that correct?
18 A. That's correct.
19 Q. Tell the jury what that amount is.
20 A. It's $6,411,000,000.
21 Q. That represents all your assets less all your
22 liabilities, and that's what's left over?
23 A. That's correct.
24 Q. Tell the jury if after you -- that amount,
25 $6,411,000,000, if your company needed to get your

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1 hands on that amount, $6,411,000,000, in order to pay
2 some debt, or a punitive damage award in this case,
3 tell the jury what would your company have to do.
4 A. Well, you would have to sell all of your
5 assets. So you'd collect your receivables and you'd
6 sell your assets, your plants and your inventories, and
7 presume that you could get the values that are on the
8 balance sheet. I mean, that would depend on how much
9 time you had to sell them. But you'd sell all your
10 assets and then you'd use --
11 Q. That would include your factories and
12 everything?
13 A. Yes, everything. Then you would use that
14 money to pay your liabilities. And then the difference
15 would be, presuming you were able to sell all your
16 assets at this rate, it would be $6,411,000,000.
17 Q. Actually, would you be able to probably do
18 that?
19 A. Probably not, it would probably be difficult
20 to get all of these rates if you actually had to do it,
21 if you actually had to sell it. If you had to sell a
22 factory, a tobacco factory, it would be hard to find
23 somebody that was a buyer for a large tobacco factory.
24 Q. But if you did that, would you be in business
25 anymore?

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1 A. No, we would not be in business.
2 Q. So I can understand. What does net -- that
3 net worth or stockholders equity number that's on the
4 balance sheet, what does that tell us about how much
5 Philip Morris, Incorporated would have available to pay
6 for a large punitive damage award?
7 A. Well, it tells you that if you wanted to shut
8 down the business and sell off all your assets and pay
9 off all your liability, and you got full value for your
10 assets, that's what you'd have to pay.
11 Q. I want to talk to you about the value of your
12 business, Philip Morris USA, because Mr. Rosenblatt has
13 called two witnesses to talk about the value, what is
14 the true value of your business. And the first witness
15 presented by Mr. Rosenblatt was testimony from a
16 gentleman by the name of Joseph Cherner.
17 MR. ROSENBLATT: I object to this. You
18 should just ask questions and not --
19 THE COURT: I agree. Sustained. He's not an

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20 expert.
21 BY MR. WEBB:
22 Q. Well, sir, have you ever met a person by the
23 name of Joseph Cherner?
24 A. No.
25 Q. And has anyone by the name of -- has anyone

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1 by that name ever come to Philip Morris and ever
2 presented any offer to buy the company for $75 billion?
3 A. No.
4 Q. That's never happened?
5 A. No.
6 Q. Have you ever heard of Joseph Cherner?
7 A. No.
8 THE COURT: I don't like that approach.
9 Okay. I mean, I sustained the objection re
10 Mr. Cherner, doesn't exist as far as this witness is
11 concerned. So let's just do it in a different fashion.
12 BY MR. WEBB:
13 Q. Sir, have you ever been familiar with any
14 methodology to value your business by looking at one
15 business transaction with Liggett in December of 1998?
16 A. Well, I mean, I'm not familiar with that
17 valuation technique. I'm aware that there was a
18 valuation technique done here in that regard.
19 Q. Are you familiar with the Liggett business
20 transaction?
21 A. Yes, I am.
22 Q. Let's talk about that for a little bit with
23 the jury. Would you please describe that Philip Morris
24 business transaction with Liggett? When did the
25 transaction conclude, sir?

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1 A. The transaction actually concluded in, it was
2 completed in early 1999.
3 Q. And what was it -- tell the jury, what was it
4 that Philip Morris was purchasing from Liggett?
5 A. Well, we bought three trademarks.
6 Q. And for what? For what?
7 A. Chesterfield, the Chesterfield trademark, the
8 L&M trademark and the Lark trademark.
9 Q. Those are brands of cigarettes?
10 A. Yes, they are.
11 Q. Now, they were owned by Liggett?
12 A. Yes, they were.
13 Q. What was the purchase price paid by Philip
14 Morris USA for the trademark rights for those three
15 brands of cigarettes?
16 A. $300 million.
17 Q. Now, when you say you're buying trademark
18 rights, explain to the jury what Philip Morris actually
19 got in the transaction.
20 A. Well, we got the trademark. In other words,
21 we got the right to use that name, along with any
22 associated equity with that name, in the marketing of a
23 cigarette product.
24 Q. Now, in connection with that transaction, was
25 Philip Morris in any way buying the entire business

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1 from Liggett of manufacturing and selling those three
2 brands of cigarettes?
3 A. No.
4 Q. For example, were you assuming or taking over

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5 any, at all, any past liability for all of the lawsuits
6 against Liggett from smokers who claimed they were
7 injured from smoking those three brands of cigarettes?
8 A. No.
9 Q. Where did the liability remain as far as
10 those three brands of cigarettes after the transaction
11 with Liggett was complete?
12 A. Remained with Liggett.
13 Q. And would Philip Morris ever have paid $300
14 million for the trademark rights for those brands if
15 you had to assume and take on the liability for
16 lawsuits because of those three brands?
17 A. No.
18 Q. Now, who negotiated the transaction on behalf
19 of Philip Morris, your company?
20 A. I did.
21 Q. Who negotiated the transaction on behalf of
22 Liggett?
23 A. Bennett LeBow.
24 Q. Who is Bennett LeBow?
25 A. He's the -- I don't know exactly what his

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1 title is. He owns Brooke, which is a company that owns
2 Liggett.
3 Q. Okay. Now, would you describe for the jury,
4 as far as when that, when you were negotiating to buy
5 the trademarks for those three brands from Liggett, the
6 negotiation started approximately when?
7 A. Well, it started some time in the, I think in
8 the late summer, early fall of 1998. It became known
9 -- and I can't remember whether it was he called me or
10 I heard about it and I called him -- but it became
11 known that he wanted to sell some of his trademarks,
12 some of his what are called premium trademarks.
13 Q. And you began to have negotiations with him;
14 is that correct?
15 A. That's correct.
16 Q. At the time you were negotiating, can you
17 describe for the jury what had been the popularity of
18 those three brands going back years ago, back into the
19 '50s and '60s and '70s?
20 A. Well, at one point in time, Chesterfield
21 actually was the leading selling brand in the United
22 States. And, of course, across the time, those brands
23 have had as much as 30 market share, with Chesterfield
24 being the biggest and with L&M having a big market
25 share.

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1 MR. MARKS: Your Honor, may I be heard on
2 this?
3 THE COURT: Might be a good time for a break.
4 (The jurors exited the courtroom.)
5 (Proceedings were had at sidebar)
6 (A brief recess was taken, after which the
7 following proceedings were held in open court:)
8 THE COURT: Okay, have a seat, folks.
9 Let's proceed.
10 THE BAILIFF: Bringing in the jury, jurors
11 entering the courtroom.
12 (The jurors entered the courtroom.)
13 THE COURT: All right, be seated, folks.
14 You may proceed.
15 MR. WEBB: Thank you, Your Honor.

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16 BY MR. WEBB:
17 Q. I think when we took a recess you were
18 explaining to the jury what had been the popularity of
19 the names, the brands Chesterfield, Lark and L&M back
20 in the '50s and '60s. Had you completed your answer?
21 A. Yes.
22 Q. What had happened to the popularity of those
23 brands in the U.S. marketplace in recent years?
24 A. Well, they've declined substantially.
25 Q. Now, was the fact that those brands have high

1 name recognition in the American public, was that
2 something important to you as you were negotiating to
3 make this purchase?
4 A. Yes.
5 Q. Now, at the time you were negotiating
6 purchasing the trademark rights to those three brands
7 from Liggett, did you know exactly what percent of the
8 U.S. cigarette market was represented by those three
9 brands as then owned by Liggett?
10 A. Well, no. I mean, I didn't personally pay
11 any attention to that.
12 Q. Did you know it was small?
13 A. Yes, I knew it was very small.
14 Q. Whatever it was, whatever it was, did the
15 actual amount, did the actual percent make any
16 difference to you?
17 A. No.
18 Q. If it had been, if the actual market percent
19 that Liggett had in selling those three brands, if had
20 it been zero at the time you made the purchase, would
21 that have made any difference to you?
22 A. No, not at all.
23 Q. If the amount of Liggett's market share in
24 connection with those three brands did not make any
25 difference, please the tell the jury, why did Philip

1 Morris decide to buy the trademark rights to those
2 three brands?
3 A. Well, there are a couple of different
4 reasons. One of them is that those brands in other
5 places in the world have been developed. And in fact,
6 over time, have become to be owned by one of our sister
7 companies, Philip Morris International.
8 And so we could see that in some other areas
9 of the world that those brands had potential. And
10 because we have an infrastructure --
11 Q. What does that word mean, "infrastructure"?
12 A. Means we have a sales force, distribution
13 capabilities. We have marketing capability. We have
14 factory capacity. We have those things at a level that
15 Liggett doesn't have, and the ability to invest in
16 those brands.
17 They represented opportunity for us because
18 they already had name recognition. So we viewed those
19 brands -- I look at them, I look at them as, from my
20 standpoint, a -- my calculation is that they're about a
21 4 share point opportunity for us in terms of
22 incremental opportunity, that we ought to be able to
23 take those four brands that at one time had as much as
24 30 share points and be able to achieve four incremental
25 share points in the marketplace for Philip Morris by

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1 putting them into our infrastructure.
2 Q. Four market points being four percent of the
3 market share in the U.S.?
4 A. Yes.
5 Q. So, when you were negotiating the deal with
6 Mr. LeBow, because of your marketing abilities and all
7 the other stuff, you actually estimated that Philip
8 Morris, once you developed the brands, would end up
9 with that percent; that was your estimate?
10 A. Yes, that's right.
11 Q. Now, if Philip Morris had believed that those
12 brands of cigarettes in the hands of Philip Morris
13 would only generate two-tenths of one percent of market
14 share, would Philip Morris ever have purchased those
15 brand trademarks for $300 million?
16 A. No.
17 Q. If anyone valued Philip Morris and the other
18 tobacco companies on the basis that Philip Morris was
19 only purchasing two-tenths of one percent of a share in
20 the cigarette market, would that be an accurate method
21 of valuation?
22 A. Not from my standpoint, it wouldn't.
23 Q. Now, can you give the jury some example, why
24 is it you thought you could do better than Liggett?
25 MR. ROSENBLATT: Objection. It's

1 repetitious, Your Honor.
2 THE COURT: Well, he's already mentioned he
3 had the infrastructure.
4 BY MR. WEBB:
5 Q. Well, let me show you -- I'm going to show
6 you something I -- I want to walk through, just, I want
7 you to comment about this methodology.
8 If you look at -- if Philip Morris, if there
9 was a methodology developed to value Philip Morris and
10 the other tobacco companies by assuming that Philip
11 Morris only bought two-tenths of the U.S. cigarette
12 market with Liggett brands, for $300 million, can you
13 see this?
14 A. Yes.
15 MR. ROSENBLATT: Objection, Your Honor, I
16 want to be heard on this.
17 THE COURT: Come over here. And let's go
18 sidebar.
19 (Proceedings were had at sidebar)
20 THE COURT: I agree with Mr. Rosenblatt on
21 that, about the chart.
22 MR. WEBB: Well, I can't --
23 THE COURT: You already did. That's where
24 we're at. Okay. So let's move on.
25 BY MR. WEBB:

1 Q. If anybody valued Philip Morris at $75
2 billion by assuming that you were buying two-tenths of
3 one percent of the market in this transaction, would
4 that be an accurate valuation?
5 A. No, that's not what we did.
6 Q. In fact, if you wanted to use that method and
7 you used the four percent figure that you just told the
8 jury, if you used that method, what would Philip Morris
9 be valued at?
10 A. 3,750,000,000.
11 Q. That's less than your net worth?

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12 A. That's correct.
13 Q. So, if you used the 4 percent number, you'd
14 be valued at less than your net worth?
15 A. That's correct.
16 Q. But do you think that's the right way to
17 value a company, anyway?
18 A. No.
19 Q. Why not?
20 A. I've never heard of anybody valuing a company
21 that way. I think the difference in the numbers simply
22 demonstrate that it doesn't make much sense simply as a
23 valuation technique.
24 Q. 95 billion to 3.7 billion is a pretty big
25 difference?

1 A. Yes, it is.
2 Q. By the way, if someone did walk into Philip
3 Morris today, into your office and offered to buy
4 Philip Morris USA Incorporated for $75 billion, would
5 you tell the jury what you would do?
6 A. I would accept the offer and take it to the
7 board of directors of the company and recommend that
8 they approve it.
9 Q. It's never happened, has it?
10 A. No.
11 Q. Now, the jury was presented with information
12 that the definition of true value is what a willing
13 buyer would pay a willing seller for a business. Do
14 you agree with that basic definition?
15 A. I do.
16 Q. Tell the jury, based on your experience in
17 running the business, what do you think a willing buyer
18 would pay Philip Morris USA, would pay Philip Morris
19 Companies right now to buy the entire company Philip
20 Morris USA?
21 MR. ROSENBLATT: Objection as speculative,
22 Your Honor.
23 THE COURT: Yes. I think we've got the horse
24 before the cart here. I think the issue is what a
25 willing seller would be willing to sell for, not a

1 willing buyer, because that would be speculative, but
2 he knows what they would be willing to sell for.
3 MR. WEBB: Your Honor, as a buyer, you have
4 to have a seller that's going to --
5 THE COURT: But only one factor he knows, and
6 that's what he's willing to sell for.
7 MR. WEBB: Your Honor, could I be heard?
8 THE COURT: It's not necessary. It seems
9 obvious, you can't tell what a willing buyer will
10 offer. He can testify as to what he's willing to sell
11 for.
12 BY MR. WEBB:
13 Q. Let me ask you this question, sir: Is there
14 a problem with your business today that would make it
15 difficult to sell your business?
16 A. Yes.
17 Q. Tell the jury what that is.
18 A. The problem is the litigation --
19 MR. ROSENBLATT: Well, I object to this
20 because there's apparently, from his own testimony,
21 there's no buyer out there.
22 THE COURT: Really. In that regard we're

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23 talking speculation. But the point being, if he's got
24 current problems with the company as it relates to his
25 financial status, I think he's qualified to testify

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1 about that. So go ahead, overruled.
2 BY MR. WEBB:
3 Q. Tell the jury what the problem is.
4 A. The problem is that the company faces a lot
5 of potential liability. This case, for example, alone,
6 given the low end of the class, which is 300,000
7 people, times the average award so far awarded, these
8 three folks, which is about $4 million, represents $1.2
9 trillion in compensatory damages.
10 MR. ROSENBLATT: Objection, Your Honor.
11 THE COURT: Sustain it.
12 BY MR. WEBB:
13 Q. Without using exact numbers, explain what the
14 problem is.
15 MR. ROSENBLATT: Well, I want --
16 THE COURT: Let's talk about it.
17 (Proceedings were had at sidebar)
18 BY MR. WEBB:
19 Q. Sir, without using any specific numbers, is
20 your company today facing an enormous amount of
21 liability, both in the state of Florida and across the
22 country, in other states, in a large amount of
23 litigation?
24 A. Yes, we are.
25 Q. And if you're going to value your company,

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1 does that affect how you would value your company?
2 A. Yes, I mean, if you're going to value the
3 company, you look at the potential earnings of the
4 company offset by the potential liability that the
5 company faces.
6 Q. And if you don't look at the liability, will
7 you come up with an accurate value?
8 A. No, you can't.
9 Q. Do you believe that it would be proper to
10 value your business, your company, Philip Morris USA,
11 do you believe it would be proper to value Philip
12 Morris USA by combining into your company the value of
13 Philip Morris International, just pour International,
14 and combine it with the value of your company, would
15 that be a proper way to value your business, sir?
16 A. No.
17 MR. ROSENBLATT: Objection, Your Honor, not a
18 valuation expert.
19 THE COURT: Let's come over here and talk
20 about this for a second.
21 (Proceedings were had at sidebar)
22 BY MR. WEBB:
23 Q. Let me return to my question, sir. Would it
24 be proper to value your business, Philip Morris USA, by
25 also including the entire value of Philip Morris

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1 International?
2 A. No.
3 Q. Are they two completely separate
4 corporations?
5 A. Yes, they are.
6 Q. In fact, let me ask you this: Can your
7 company, Philip Morris USA, in any way, in any way at

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8 all, can you use the value or assets of Philip Morris
9 International to pay any punitive damage award that
10 this jury might render?
11 A. No.
12 Q. At all?
13 A. No.
14 Q. A dime?
15 A. No.
16 Q. Does it make any sense at all to combine both
17 together?
18 A. No.
19 Q. I think you said this yesterday. Do you have
20 anything to do with the management or operation of
21 Philip Morris International?
22 A. No.
23 Q. Do they have anything to do with your
24 business at all?
25 A. No.

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1 Q. Do you comingle or mix your assets together
2 in any way?
3 A. No.
4 Q. Do you do any joint marketing activities?
5 A. No.
6 Q. Do you have any employee at your company that
7 also works for Philip Morris International?
8 A. No.
9 Q. Or vice versa?
10 A. No.
11 Q. They're completely separate?
12 A. That's correct.
13 Q. Have you heard of a methodology of valuing a
14 business with what is known as a discounted future cash
15 flow analysis?
16 A. Yes.
17 Q. Are you familiar with, generally familiar,
18 with that methodology of valuing a business?
19 A. Yes.
20 Q. If you're going to value a business by using
21 the future cash flows, you also have to consider the
22 future liabilities?
23 A. Absolutely. I mean, you've only done half
24 the analysis if you do cash flow, you have to do the
25 other half of the analysis.

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1 Q. Future liabilities could completely offset
2 the cash flow?
3 A. That's correct.
4 Q. Can you think of any industry in America that
5 faces more potential liability than you do today?
6 A. No, not that I'm aware of.
7 Q. And by the way, as far as using future cash
8 flows, can your company today, could you pay a punitive
9 damage award with money that you haven't earned and
10 that's going to be earned in the future?
11 A. No.
12 MR. ROSENBLATT: Objection, Your Honor,
13 paying today is not the test.
14 THE COURT: That's going to be a matter up to
15 the Court at this point.
16 BY MR. WEBB:
17 Q. Now, are you familiar with what is known as
18 due diligence, if somebody wants to buy a company?

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19 A. Yes.
20 Q. Explain to the jury what that is.
21 A. Well, due diligence is when, once an offer
22 has been made to buy a company, there's a transaction
23 process which, part of which is allowing the people who
24 are the buyers to come into the company, review the
25 books, review any information relevant, or that would

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1 be affecting the future viability of the business, to
2 determine whether or not what they believe they're
3 buying they're actually getting, or whether there might
4 be some impediment to future performance in that
5 business.
6 Q. And would anyone, would anyone, before they
7 wrote a large check to Philip Morris to buy your
8 business, would they look into your liability?
9 A. Yes, they would.
10 Q. All your pending lawsuits?
11 A. Yes, they would.
12 Q. How many are there, by the way?
13 A. There's over a thousand.
14 Q. Are many of them large claims like this where
15 you have claims combined together in one case?
16 A. Yes.
17 Q. And if you valued Philip Morris by totally
18 ignoring that liability, would that be an accurate
19 value?
20 A. No, it would not.
21 Q. By the way, since the attorney generals began
22 suing the tobacco companies in 1994, has anybody come
23 to Philip Morris to offer to buy your business?
24 A. No.
25 Q. Anyone at all?

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1 A. No.
2 Q. Let me ask you this: Do you think there's
3 any -- strike the question.
4 Based on your experience in running this
5 business right now, what would be the likelihood that
6 Philip Morris could go into the capital markets now or
7 a year from now and borrow $118 billion against the
8 value of your company?
9 A. Well, right now Philip Morris has -- Philip
10 Morris USA has no borrowing capability at all. The
11 best we've been able to determine, there's no bank in
12 the world that will loan us money pending resolution
13 of, for example, cases like this and all the other
14 cases that come behind it. So right now we are unable
15 to borrow money.
16 Q. When banks loan money, do they look at your
17 potential liability?
18 A. Well, that's right. I mean, that's an
19 important thing for them to determine whether or not
20 they'll be repaid.
21 Q. I put your net worth back up on the screen.
22 Could you even borrow that?
23 A. No.
24 Q. Anything close to it?
25 A. No.

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1 Q. Let me move to a little different subject.
2 Mr. Szymanczyk, yesterday Mr. Rosenblatt
3 actually ended his case by showing this chart to the

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4 jury. And it's a chart that Mr. Rosenblatt entitled:
5 Number of Individuals on Tobacco Company Defendants
6 Direct Mail Smokers List.
7 Then there's numbers there for Philip Morris,
8 26,245,000 in the whole United States and 1.6 million
9 in Florida. Do you see that, sir?
10 A. Yes.
11 Q. First of all, just so the jury understands,
12 explain to the jury, what is Philip Morris' direct mail
13 smoker list? Explain to the jury what that is.
14 A. Well, it's a list of people who have, over
15 time, signed up to be on our database because they
16 wanted to receive information from us. So they sign up
17 and have a certification that they've signed up, and
18 they've said they're 21 or older, and indicated they're
19 a smoker, and that they would like to receive
20 information from us.
21 Q. So I want to make sure. Anyone who is on
22 that list then has certified to Philip Morris they're
23 21 or older?
24 A. That's correct.
25 Q. And they're smoking?

1 A. That's correct.
2 Q. And if they don't certify to that, they don't
3 go on your mailing list?
4 A. That's correct.
5 Q. And as a result of the MSA, do you have even
6 additional restrictions or different procedures?
7 A. Right. If people go on this database now,
8 they have to actually provide a copy of their
9 government I.D., a driver's license, and we keep that
10 copy on file.
11 Q. And do you then, if someone ends up on your
12 list because they wanted to be on the list, can they
13 get off the list?
14 A. Yes.
15 Q. And how does that happen?
16 A. Well, I instituted a policy a couple years
17 ago which requires that every piece of mail, direct
18 mail, we send out has what's called an opt-out
19 provision, where people can, if they don't want to be
20 on the database, they check that provision, or there's
21 a 1-800 number that they can call, and they simply tell
22 us they don't want to be on the database anymore, and
23 so we take them off.
24 If we don't hear from people on the database
25 within a reasonable period of time, we call them up on

1 the phone and ask them whether or not they want to
2 continue to be on the database.
3 Q. And actually, as a result of those procedures
4 that you instituted, what's actually happened to the
5 total -- what's happened to the total number of people
6 in your database in the last couple of years?
7 A. It's actually come down by about 4 million
8 people.
9 Q. Four million people have been taken off?
10 A. Yes.
11 Q. And everyone on there, as far as you know,
12 wants to be on there?
13 A. That's correct.
14 Q. What do you send to them? What do people get

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15 when they're on your direct mail list?
16 A. They get information, promotion offers,
17 sometimes coupons. And they get other information,
18 like, for example, the Web site mailing that we sent to
19 them.
20 Q. And when they get these mailings, there's a
21 box now they can check off if they want off the mailing
22 list?
23 A. That's right, there's a box they can check or
24 pick up the phone.
25 Q. By the way, how accurate is your list as far

1 as keeping people 21 or under off that list?
2 A. I think, historically, actually it's been
3 very accurate. When you look at a database of that
4 size, we would get about 100 calls a year from somebody
5 who would say: Hey, somehow my kid got on your
6 database. And so we would take him off, which is,
7 means the database is like 99.999 percent accurate.
8 Now, of course, you can't get on unless you
9 actually have the government I.D. on file. So I don't
10 think we even have that in the future.
11 Q. By the way, if we look at the number in
12 Florida, 1.6 million, is that consistent with Philip
13 Morris' historical data as to the percent of people who
14 smoke Philip Morris cigarettes who live in the state of
15 Florida?
16 A. Yes, I think that's about 6 percent of that
17 number, and typically our volume in Florida ranges
18 between 5 and 6 percent of our total volume for the
19 year.
20 Q. Traditionally, over the last many years,
21 roughly every year the volume of cigarettes sold
22 throughout the United States, 5 to 6 percent, is in the
23 state of Florida?
24 A. That's correct.
25 Q. And that's consistent with that?

1 A. That's correct.
2 Q. And by the way, is this methodology, this
3 direct mail smoker list methodology of marketing
4 cigarettes, is that a good way to avoid marketing to
5 kids?
6 A. Yes, it is.
7 Q. Why?
8 A. Because it's people who have said they want
9 to be marketed to, and they're adults. So it's a clear
10 way to communicate to people who have chosen to want to
11 be communicated with. And if they decide at some point
12 that they want to stop being communicated with, or if
13 they decide they want to quit smoking and they don't
14 want to get things from us anymore, then it's very easy
15 for them to remove themselves from the database.
16 Q. Now, you told us a few minutes ago that you
17 had given some thought to what the effect of a large
18 punitive damage award would have on your company. Have
19 you prepared a chart that would call to the jury's
20 attention certain potential adverse effects that a
21 large punitive damage award would have on your company,
22 Philip Morris?
23 A. Yes.
24 Q. Let me show you what I have marked as Exhibit
25 4 --

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THE COURT: Before you do that. Take it off, please.

MR. WEBB: It's not on.

THE COURT: Before you do that, let's take a look.

(Proceedings were had at sidebar)

BY MR. WEBB:

Q. Sir, I want to go through some of the effects a large punitive damage award can have on Philip Morris.

Let's start with, I want to start with Philip Morris employees. Start with them.

Do you believe that a large punitive damage award could adversely effect Philip Morris USA employees?

A. Yes, it does.

Q. How many people did you say Philip Morris USA employs?

A. Just under 13,000.

Q. Are they employed in all 50 states?

A. Yes.

Q. In fact, have you prepared a chart that shows where they're employed?

A. Yes.

Q. Let me show you what I've marked as Exhibit

40068.

MR. ROSENBLATT: I'm going to object to this.

THE COURT: I guess we better start talking about this whole area here. Let's go sidebar.

(Proceedings were had at sidebar)

BY MR. WEBB:

Q. I want to return to where we were right before the little break.

Would you please explain to the jury how a large punitive damage award could affect employees at your company?

A. Well, I think the best way to explain that is to look at what happens when volume goes down. For example, when we did the Master Settlement Agreement, as I described, the volume in the industry went down about 13 percent. Our volume has gone down substantially.

The net result of that has been the closing of one of our facilities in Louisville, Kentucky, we're in the process of closing it. And that required us -- we didn't have work, enough work for those people anymore, so it required us to close the factory.

Q. Can you explain to the jury what happens when there's a price increase and how consumption goes down?

A. Well, as I --

THE COURT: Can you come back here for one second?

(Proceedings were had at sidebar)

BY MR. WEBB:

Q. Let me ask you the question again. Explain to the jury how a large punitive damage award could affect your pricing, thereby affect consumption, and thereby affect production and people's jobs.

A. Well, to pay the money, you have to collect it from somewhere. The only way the company gets money

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11 is to sell product. So it goes into the price of the
12 product, and the price goes up.
13 And there are about 60 other competitors in
14 the marketplace that aren't subject to this kind of
15 litigation, or weren't subject to some of the other
16 things that we're paying for. And they get some of the
17 volume. And some of the volume is just a reduction in
18 consumption. So the volume goes down substantially.
19 When the volume goes down, then we run our
20 machines less. We don't have as much work in our
21 factory, so you can't have people standing around, so
22 you have to reduce the number of people you have. And
23 you reduce the management that manages those people at
24 the same time.
25 So that, for us, resulted in closing one of

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1 our factories, and it's in the process of being closed,
2 in the reduction of approximately 2,000 people.
3 MR. ROSENBLATT: Your Honor, this doesn't
4 relate to the punitive damage.
5 THE COURT: Has nothing to do with punitive
6 damage award, which hasn't been assessed, if any. Has
7 to do with the MSA, which is not what we are talking
8 about.
9 MR. WEBB: That's my next question.
10 THE COURT: I want the jury to understand
11 that the closing has nothing to do with this case.
12 MR. WEBB: Obviously.
13 BY MR. WEBB:
14 Q. Sir, what you just described to the jury is
15 something that has to do with the MSA?
16 A. Yes. Just an example of when the volume goes
17 down, less work for the people in the company, so
18 that's the negative impact on all the employees in the
19 company.
20 Q. The volume went down because prices went up?
21 A. That's correct.
22 Q. And if you have a large punitive damage
23 award, what happens to prices?
24 A. It goes up. You have to pay it somehow.
25 Q. Would a payment of a large punitive damage

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1 award in this case affect Philip Morris' ability to
2 compete in the marketplace?
3 A. Yes.
4 Q. I want you to explain that to the jury,
5 please.
6 A. Once again, you have to pay money, you have
7 to collect the money somehow. And again, it's a
8 pricing issue. And as our price goes up, it makes our
9 product less competitive in the marketplace relative to
10 the other products that are in the marketplace that
11 aren't subject to this kind of litigation.
12 And there's a whole range of new
13 manufacturers and foreign manufacturers that ship
14 product in the United States that aren't subject to
15 these kinds of expenses. And so they're competitors in
16 the marketplace.
17 Q. Now, would you also explain to the jury how a
18 large punitive damage award would affect your ability
19 to pay compensatory damages in the future to other
20 injured smokers?
21 A. Well, you know, as I articulated, we have a

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22 lot of litigation. This particular case represents a
23 lot of compensatory damage litigation.
24 If you start to add up the numbers, they're
25 very, very large numbers, more than you can contemplate

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1 that the business can produce. And if you did try to
2 recover it in pricing, it results in prices that are
3 two or three times higher than other products that are
4 in the marketplace.
5 So, when I look at it, at least from my point
6 of view, I have a hard time contemplating on how you'd
7 have the money to pay all the compensatory damages,
8 much less punitive damages. So it seems to me the
9 compensatory damage amount facing the company is a huge
10 amount of money.
11 And that's why, when I look at the subject of
12 punitive damages, it simply removes the ability to pay
13 compensatory damages.
14 MR. WEBB: Your Honor, I have one more area.
15 I'm almost complete.
16 THE COURT: Let's go talk about it. Because
17 I'd like to finish before lunch.
18 (Proceedings were had at sidebar)
19 (The following proceedings were held in open
20 court.)
21 THE COURT: Okay, it's going to take a little
22 bit longer than I thought. Why don't we go ahead and
23 take our lunch break now?
24 Come back at 1:30.
25 (The jurors exited the courtroom.)

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1 THE COURT: Okay, we're going to need you to
2 step outside before we argue this point.
3 (The witness exited the courtroom.)
4 THE COURT: Anybody who wants to leave, let's
5 do it, because we're just going to take up a legal
6 matter here. Might as well go out now if you want to.
7 Otherwise, be seated.
8 MR. WEBB: Your Honor, I want to take up at
9 least what's critically important to Philip Morris, and
10 I think some misinformation was given to you yesterday.
11 I think it's important that I at least explain it.
12 Yesterday you said you weren't -- probably is
13 my fault -- that you weren't clear on what my argument
14 or position was on what the effect of market share has
15 on this jury, or what they should do in the way of
16 punitive damages.
17 I need to make sure I make this clear because
18 this is so critically important to my client, Philip
19 Morris.
20 My position, Philip Morris' position is that
21 market share obviously is critically important because
22 the market share of cigarettes smoked over the last 50
23 years by the class members is probably maybe the most
24 predominant factor that a jury here is going to have to
25 decide when they figure out how much harm was caused by

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1 each of these defendants, because they have to render
2 joint and several verdicts.
3 My client's name -- and they will be
4 instructed that at least now -- as opposed to Phase II,
5 II-A and I, there is no joint and several liability --
6 it's Philip Morris on its own, Reynolds on its own,

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7 et cetera.
8 The issue is: How much harm did each of
9 these companies cause over the last 50 years? What
10 Mr. Rosenblatt is trying to do is to tell the jury, if
11 we just take a snapshot today, in 1999 or 2000, Philip
12 Morris has about 50 percent of the market share.
13 That's a truthful statement on his part.
14 However, that clearly is erroneous if you
15 look at the scope of what's happened over the last 50
16 years, that's relevant.
17 It's not our market share today that relates
18 to the people that we've harmed. The people that are
19 suing in the class today are people that have been
20 smoking cigarettes 35, 40 years.
21 I want Your Honor to see, Mr. Rosenblatt has
22 said that we have 50 percent of the market. This is
23 actually what we have, and we've done it on the --
24 By the way, this was not presented in
25 Phase I, I went back and looked last night, because I

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1 think Mr. Smith thought it was, and that was wrong, and
2 it was not presented at all in Phase I.
3 This is the chart I want to use, because what
4 this chart shows is accurate, it shows the market
5 share, which Philip Morris now is up at 50 percent,
6 that's absolutely true.
7 But you can't take a snapshot today. If you
8 go back to 1950 and use the Maxwell Reports, no one
9 disagrees with the accuracy of these numbers.
10 Philip Morris market share, I used the marker
11 at 1980, it was 15 percent. It's under 10 percent
12 here, but gradually, by 1980, it's 15 percent.
13 If you average it out over the 50 years, it's
14 25 percent.
15 Now, what happened is that -- so there's no
16 question that if I cannot present to the jury the truth
17 about market share, then I'm being deprived of one of
18 the most -- maybe the most critical piece of evidence,
19 to show the jury that whatever harm that we caused,
20 which is clearly relevant. That's valid factor number
21 one, is the amount of harm Philip Morris caused.
22 That's what Mr. Rosenblatt is going to get up and yell
23 about in closing argument.
24 This is the piece of evidence I have to show
25 that in fact the harm that I caused at least was not as

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1 great, for example, as B&W, for example, which I intend
2 to show the jury and argue, no question about it.
3 Because yesterday I think Mr. Smith forgot, he was
4 complaining that I combined B&W and American Tobacco
5 together on this chart.
6 But the reason I did it is because Mr. Smith
7 told you, during Phase II-A, that they had to be
8 combined together. He told you the truth. He told you
9 in II-A, they had to be combined together because Brown
10 & Williamson assumed the liability of American Tobacco.
11 And so when we argued -- just so you know, B&W is in
12 this case not only for B&W but for American Tobacco.
13 So when we got to the verdict form in Phase
14 II, Mr. Smith told you: Judge, you would be making a
15 serious mistake if we did not combine them together.
16 We argued it out and you agreed.
17 This is the verdict form. B&W, at their

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18 request, were combined together on the verdict form as
19 one entity, with American Tobacco. They obviously will
20 have to do the same thing here in this trial. They're
21 not going to be able to separate them. So I think
22 Mr. Smith probably was just mistaken.
23 But the fact is what this shows is that B&W
24 and American have to be combined together. There's no
25 other way to do it. You can't do it any other way.

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1 They're going to be on the verdict form this way.
2 All that I'm showing the jury is the truth.
3 The truth is that Philip Morris' market share was this
4 amount up to a certain point in time. And over the
5 total point in time was averaged out at 25 percent.
6 And so yesterday I don't think I was clear,
7 because -- this is not just a chart I want to use, this
8 is my critical piece of evidence. And if I'm deprived
9 of the right -- by the way, I went back to look at
10 Phase I to make sure, if the Maxwell Reports were in
11 evidence. If some witness had testified to these
12 numbers, I would not have to repeat it here. But I
13 went back and looked last night. It's not there.
14 So, if I'm not allowed to have this witness
15 tell the jury the truth, then Mr. Rosenblatt is going
16 to get up and argue that I should be 50 percent
17 accountable.
18 And by the way, since we're only dealing with
19 hundreds of billions of dollars, that would be an
20 enormous impact upon my client. And so there's --
21 there is no reason not to do this.
22 Now, I recognize that some of the other
23 companies would prefer the jury not to know that the
24 truth is Philip Morris doesn't have 50 percent of the
25 market for the last 50 years. And I can understand

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1 why, and I don't -- and I expect them to argue against
2 this chart, and that's okay, that's fair game.
3 But all I'm pointing out to Your Honor is
4 that this is the truth of the market share.
5 Now, I'm perfectly prepared to instruct the
6 jury, if you want to, market share is irrelevant, okay,
7 if that's what you want.
8 So, Mr. Rosenblatt can't argue market share,
9 can't refer to Philip Morris having 50 percent of the
10 market or being the giant in the industry.
11 And if you want to just all of us be in this
12 thing together, then I probably would go back to my
13 client and talk about it. But as far as I know,
14 Mr. Rosenblatt doesn't want to do that. And therefore,
15 the only way I have to respond to it is to show the
16 jury what the facts are, so this is a critical piece of
17 evidence.
18 And to the extent that there's any view that
19 we're being misleading by combining B&W and American
20 together, Judge, they're going to be on the verdict
21 form this way because they asked to be on the verdict
22 form together. Because they know that they are -- B&W
23 bought American and assumed all their liability. They
24 they have to be combined together.
25 So this shows the jury the true picture of

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1 market share, which obviously relates to the issue of
2 harm, which is, who smoked what cigarettes?

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3 In fact, what's so interesting, that's why --
4 I think I've gone on too long. You understand my
5 point.
6 THE COURT: I understand your point, but I do
7 have a few questions. One is --
8 Do you have handy, anybody, the verdict of
9 Phase II?
10 MR. WEBB: Yes. This is it.
11 THE COURT: May I take a look at it?
12 MR. WEBB: Yes.
13 THE COURT: I didn't memorize it.
14 MR. WEBB: This is the April 7th.
15 THE COURT: Whatever.
16 MR. WEBB: I wanted to make sure I had the
17 right one.
18 THE COURT: Meanwhile, Mr. Rosenblatt, do you
19 want to discuss this?
20 MR. ROSENBLATT: Yes. I mean, we're against
21 the showing of the chart. This is a lot of Phase I
22 testimony. Because you'll remember, Judge, how much
23 time was spent asking questions in Phase I about how
24 long Marlboro has dominated the field. And then there
25 was testimony, there was a period of time Luckys was

1 number one, Chesterfield.
2 So this jury has a historical perspective
3 that at different historical times the market shares
4 have been different, but it's undeniable and unique
5 that there has never been a period of time, for as long
6 a period of time, where there has been a brand such as
7 Marlboro, which has dominated for as long as it has,
8 and where the distance between Marlboro and the number
9 two brand is as enormous as it is now and has been for
10 a number of years.
11 And that was all discussed in Phase I. And
12 this chart doesn't really change the fact that for well
13 over a decade now, when all of the three class
14 representatives were diagnosed with their disease,
15 Philip Morris had 50 percent of the market. And this
16 just brings in a complicating factor which is not
17 germane.
18 THE COURT: Let me ask if anybody can give
19 me, without a lot of fuss, the verdict from Phase I.
20 Do you have that handy?
21 MR. WEBB: I do not.
22 MR. ROSENBLATT: I can probably locate that.
23 This may be a first where I'm finding
24 something they can't find:
25 Oh, I'm so incredibly organized.

1 THE COURT: Write that down.
2 MR. ROSENBLATT: Write that down as just
3 another fiction.
4 THE COURT: Or is it a self-serving
5 statement?
6 I just wanted to make sure of something.
7 That's what I thought it was.
8 MR. UPSHAW: Your Honor, I do need to add to
9 this.
10 THE COURT: Yes, sir. You have a comment?
11 MR. UPSHAW: Actually, I do, Your Honor. I
12 want to make a comment specifically to what was just
13 argued to you, and specifically on this chart.

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14 Mr. Smith was not wrong yesterday and he was not
15 confused. This chart is, on its face, misleading for
16 several reasons, and I'll reiterate those again.
17 Mr. Webb is right that on the Phase II
18 verdict form, that we are combined. However, what
19 we're looking at here is the ability to pay now, as
20 Mr. Smith said yesterday. But the fact that this chart
21 combines Brown & Williamson and American Tobacco into
22 one number is, in itself, misleading to this jury.
23 Because the combination of these two companies did not
24 happen until 1995.
25 So this jury, if you want to have a correct

1 and accurate chart, you should put down what the
2 ranking of average annual market shares was from 1950
3 to 1980 for Brown & Williamson in one line, and on
4 another line you should put American Tobacco.
5 Strangely enough, if you do that, Philip
6 Morris does not come in third place. And that's what
7 they're trying to get to. The jury should be able to
8 say and to look at both of the companies, American and
9 Brown & Williamson, and say: Look, well, we do see, if
10 we're looking at harm, there was some harm when you had
11 a percentage of the market, and this was your
12 percentage over 50 years. And we may give some portion
13 of damages for that.
14 And then they should be able to look at Brown
15 & Williamson and say: Well, we may or may not give
16 some portions of damages for Brown & Williamson market
17 share historically.
18 They should not be combined where it is a
19 false and misleading statement saying that they have
20 been combined since 1950. That's why the chart is
21 wrong.
22 THE COURT: But they're responsible
23 regardless of what the numbers are, right?
24 MR. UPSHAW: The responsibility is a
25 different issue.

1 THE COURT: The point is this --
2 MR. MARKS: Your Honor --
3 THE COURT: Go ahead. I gave him a chance.
4 MR. MARKS: Your Honor, I don't think there's
5 a real disagreement that current market share in this
6 phase of the trial is probative of what the ability,
7 financial net worth, that sort of thing.
8 With respect to historic market share,
9 however, that's really, in this case, it's probative of
10 nothing, because in this case we have, like it or not,
11 conspiracy claims and we've had conspiracy findings.
12 And for each of these -- for example, Phase
13 II-A, although Liggett did not sell cigarettes to --
14 the evidence was that Liggett did not sell cigarettes
15 to any of these three individuals, Liggett nonetheless
16 was found liable in Phase II-A.
17 So the historic market share is not going to
18 be probative of the harm caused because, under the
19 theories of this case, the harm is not merely caused by
20 actually selling cigarettes.
21 THE COURT: I understand. That's basically
22 what I was trying to determine, looking at the verdict
23 form.
24 What you're talking about is market share,

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25 but what we're talking about in punitive damage is

1 present ability to pay, and that has nothing to do with
2 prior market share. And I agree with counsel for
3 Liggett on that issue.
4 And also, one thing you're forgetting, you're
5 forgetting the issue of the intensity of the harm as
6 compared from one company to the other if you break
7 down the issue in your terms.
8 The jury may find that, even if you had a two
9 percent share of the market, that you were much more
10 culpable in your activities than anybody else for any
11 type of activities. It could be that culpability
12 increases even though market share decreases. That's
13 not an accurate measurement.
14 I disagree with your analysis of it. I think
15 the analysis should be: What is the market share today
16 as it relates to the ability to pay?
17 MR. WEBB: The ability to pay, Judge, that's
18 only one issue.
19 THE COURT: I don't buy your argument,
20 counsel.
21 MR. WEBB: Your Honor, can I make a motion
22 for mistrial? I'm being deprived of my most critical
23 evidence.
24 THE COURT: You can make your motion.
25 MR. WEBB: I'm making a motion, Your Honor.

1 THE COURT: Okay. Deferred.
2 (Court was adjourned at 12:30 p.m.)
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